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Human rights situations that require the Council's attention

Written statement^{*} submitted by the International Association of Democratic Lawyers (IADL), a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2015]

^{*} This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Human Rights situation in Ukraine

The International Association of Democratic Lawyers (IADL) calls the attention of the Council to the dire situation of human rights in Ukraine. Since the violent insurrection in November 2013 and the consequent coup d'état, the country sank in a spiral of violence which is harshly affecting the entire population, destroying lives and depleting its scarce resources.

In this dramatic context, we draw your attention in particular to violations of human rights resulting from the alarming spread in Ukraine of racism, discrimination, xenophobia and other form of intolerance.

Government alliances with leaders of far-right nationalistic groups are a matter of serious concern, as racist and xenophobic platforms are being legitimated and institutionalized. The impact of these groups on the political programs of the government, and the rise of political violence are worrying signs of a dangerous drift in Ukrainian policy, which risk to jeopardize security all over Europe.

In the recent months, we have witnessed the exponential growth of speeches that advocates national, racial, religious or political hatred, along with episodes of racist and xenophobic violence. The war propaganda which pervades the country, has given rise to attempts to track down 'enemies' and 'traitors' of Ukraine, hunt of political dissenters, and persecution of independent and opposition media. Holocaust and other WWII memorials were desecrated and hundreds of monuments were topple by enraged masses.

Discrimination and attacks are directed against different minorities groups, but also against political opponents, notably communists. The growth of ultra-nationalist far right groups, has indeed led to a proper "anti-communism hysteria" which has resulted in innumerable acts of vandalism, aggression and threats against leaders, members and sympathizer of the Communist Party or ideology.

Under a general climate of impunity neo-nazist groups attack Communist Party offices, demonstrations and activists throughout the country.

Instead of countering and punishing this phenomena, the government plays an active role in the campaign aimed to eliminate the Communist Party from the public arena. It's worth remembering that the KPU, in the last parliamentary elections before the "regime change", obtained more than 2.5 million votes (13.2%) and that from the beginning took a strong critic stance against the government policies.

BAN ON KPU

In July 2014 the Minister of Justice and the State Registration Service of Ukraine, with the support of third parties, including the neo-fascist group Svoboda, lodged an administrative lawsuit to ban the Communist Party of Ukraine (KPU). In parallel, more than 300 criminal proceedings have been started against members of the Communist Party, including its Secretary General, Mr. Petr Symonenko.

KPU and its leaders and members are generally accused of supporting the separatist movement and are also consequently alleged to have act against the territorial integrity and the inviolability of the Ukrainian borders. Charges are mainly based on public declarations made in the Parliamentary debate in support for a referendum or constitution change allowing federalism in the country.

According to international law and the European Convention on Human Rights, the ban of political parties, as a particularly far-reaching measure, should be used with the utmost restraint and should be carry out in total respect of the procedural guarantees of a fair trial.

The case was due to be examined by the Circuit Administrative Court of Kyiv. Lawyers of IADL attended the trial as international observers in order to verify its compliance to international standards. Hearings were held in August and September 2014. Another hearing was set for February 18 2015, but in the previous days a particularly serious incident occurred and the trial has been suspended *sine die*.

On February 16th and 17th 2015, law enforcement officials raided the office of judge Kuzmenko, in charge of examining the appeal to ban the KPU, and seized his computer and other documents related to the case. The police operation affected also other judges and Court employees. Following these illegal searches, judge Kuzmenko withdrew from the case. All the 25 judges of the Circuit Administrative Court of Kyiv issued a public statement denouncing the searches as a direct attempt to pressure judge Kuzmenko to adopt a decision on KPU which was favorable to the Prosecutor General. They concluded by affirming that they could not guarantee a fair trial under such pressure and disqualified themselves from hearing the case on the ban of KPU.

Severe reprisals were applied against the 'insubordinate' judges. Some of them were even recalled to the military service in the context of the so-called "mobilization to the anti-terrorist operation" in the East of the country. The Minister of Justice continues to put forth disciplinary proceedings against them. The trial now has been transferred to another Circuit Administrative Court.

Awaiting juridic developments, and for any case, recently adopted "decommunisation laws" put the basis to outlaw all leftist and communist parties.

The so-called "Decomunisation Laws"

On April 9, 2015, the Verkhovna Rada adopted a package of four bills, laying down its own official version of Ukrainian 20th century history. According to the new legislation, any challenge to this official version constitutes a criminal offense.

The laws ban the dissemination of communist ideology and the use of its symbols, and provide for an extensive de-Communisation of public space, including by changing names of places (town, streets, schools) associated with the Communist past. It bans as well the production and possession of materials which propagate Communism.

One of the four bills ("On legal status and commemorating of participants in the struggle for the independence of Ukraine in the twentieth century") officially recognized members of OUN -UPA as "fighters for the country's independence". It also introduces liability for publicly expressing disrespect for their role in the struggle for the independence and criminalizes public denial of the legitimacy of their fight as a "desecration of their memory".

The Organization of Ukrainian Nationalists (OUN) is an ultra-right political organization that during WWII actively collaborated with Nazi Germany, taking also part in anti-Jewish pogroms. In 1943, OUN organized the Ukrainian Insurgent Army (UPA), forming the backbone of the SS Division Galicia. OUN-UPA are responsible, inter alia, for the slaughtering of tens of thousands of Poles and Jews in one of the most heinous acts of ethnic cleansing in the history of Ukraine.

The laws were signed by Poroshenko on May 15 and gone into effect. *"It is discouraging for freedom of expression and media freedom advocates that the law has gone into effect, despite various calls to safeguard these basic rights"* said Dunja Mijatovic, OSCE Representative on Freedom of the Media in a statement. And she added *"broadly and vaguely defined language that restricts individuals from expressing views on past events and people, could easily lead to suppression of political, provocative and critical speech"*.

The adoption and implementation of these laws represent a clear and gross violation of freedom of opinion and expression and freedom of association as enshrined by several international and regional human rights instrument ratified by Ukraine. Moreover such laws contravene basic principles of human rights which are embodied in documents of the Venice Commission, as the Guidelines on prohibition and dissolution of political parties and analogous measures, as well as the Code of Good Practice in the field of Political Parties and OSCE opinions.¹

The adoption of these laws raises serious questions about Ukraine's commitment to the principles and values of the Council of Europe and the United Nations itself. Moreover these laws lead to a profound split in Ukrainian society, fueling dangerous tensions, generating ideological confrontations between citizens with all foreseeable negative consequences.

CONCLUSIONS

¹OSCE/ODIHR of 2013 regarding legislative ban symbols of the Communist era in Moldova. With this opinion, the Commission condemned the adoption by the Moldovan Parliament to ban communist ideology and symbols of the Communist era.

In the light of the above, IADL urges the government of Ukraine:

- to respect the basic principles of democracy and its human rights obligations and commitments under international law, the ECHR and the guidelines principles of the Venice Commission of the Council of Europe,
- to ensure inclusivity and equal participation of all in public affairs and political life, including minorities and opposition political parties;
- to combat intolerance and vandalism and take all necessary measures to prevent advocacy of national, racial, political or religious hatred that constitutes incitement to discrimination, hostility or violence, and to punish such acts when they occur;
- to guarantee the right of everyone, without discrimination, to the full enjoyment of all human rights and fundamental freedoms in line with international standards.

IADL also call upon all concerned Special Rapporteurs, in particular on freedom of expression, freedom of association, on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and on the independence of the judiciary, to undertake an urgent visit to Ukraine.

We call upon the HRC to ensure the fulfillment by the Ukrainian government of its human rights obligations, and we finally call on all member states to exercise their influence, both at multilateral and bilateral level, in order to stop any antidemocratic and belligerent drift in Ukraine.

